

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

RICHARD MERKEL,

Plaintiff,

vs.

3M COMPANY,

Defendant.

4:23-cv- 4050

**COMPLAINT AND
DEMAND FOR JURY TRIAL**

COMES NOW the Plaintiff, Richard Merkel, by and through his attorneys of record, and for his Complaint against the above-named Defendant states and alleges as follows:

PARTIES

1. Plaintiff Richard Merkel (“Plaintiff”) is and at all relevant times was a resident of Mobridge, South Dakota.

2. Defendant 3M Company (“Defendant”) is incorporated in the state of Delaware with its principal place of business in St. Paul, Minnesota. Defendant is a manufacturer and distributor of industrial products and solutions.

JURISDICTION AND VENUE

3. This Court has jurisdiction over the Parties and subject matter of this action pursuant to the provisions of 28 U.S.C. § 1332 because the amount in controversy exceeds \$75,000, exclusive of interest and costs, and complete diversity of citizenship is present between Plaintiff and Defendant.

4. This action is properly brought within this Court pursuant to 28 U.S.C. § 1331(b)(2) because the cause of action occurred in the Southern District of the State of South Dakota.

FACTS

5. Plaintiff is a truck driver for a trucking company that regularly transports product for Defendant.

6. On or about June 18, 2021, Plaintiff picked-up a sealed trailer from Defendant's facility in Aberdeen, South Dakota.

7. Plaintiff transported the trailer and its load from Aberdeen to Nordica Warehouse in Sioux Falls, South Dakota.

8. When Plaintiff arrived at Nordica Warehouse's loading dock, he opened the doors of the trailer, and a large roll of material used to make face masks fell out of the trailer.

9. The large roll struck Plaintiff, knocking him unconscious and causing him to fall to the ground.

10. The Defendant's practices and conduct, including but not limited to, its failure to properly strap down and secure the large roll of material, caused injury to Plaintiff.

11. As a direct and proximate cause of Defendant's actions, Plaintiff sustained injuries, including but not limited to, personal injuries resulting in a course of medical treatment; past, present and future pain and suffering; loss of enjoyment of the capacity of life; emotional distress; past and future medical costs and expenses; lost wages; and other general and special damages.

COUNT I
Negligence

12. Plaintiff hereby realleges paragraphs 1-11 of this Complaint and incorporates them as if fully set forth herein.

13. Defendant owed a duty of reasonable and ordinary care to Plaintiff.

14. Defendant breached its duties owed to Plaintiff by, including but not limited to, failing to exercise reasonable care in loading the trailer, failing to properly secure the product in the trailer, and failing to warn and train.

15. As a direct and proximate result of Defendant's negligence, Plaintiff sustained past, present and future pain and suffering, permanent impairment and disability, a loss of the enjoyment of the capacity of life, emotional distress, past and future lost wages, past medical costs and expenses, and future medical costs and expenses all of which are compensable under South Dakota law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays for damages against Defendant as follows:

- (1) For Plaintiff's compensatory, general and special damages in an amount the jury determines to be just and reasonable under the circumstances;

- (2) For Plaintiff's attorneys' fees, costs and disbursements;
- (3) For pre- and post-judgment interest; and
- (4) For such other and further relief as the Court deems just and proper under the circumstances.

Dated this 11th day of April, 2023.

JOHNSON, JANKLOW & ABDALLAH, LLP

BY  FDR

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Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby respectfully demands a trial by jury on all issues so triable.

 FDR
Jami J. Bishop

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

RICHARD MERKEL

(b) County of Residence of First Listed Plaintiff Walworth County, SD
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Johnson, Janklow & Abdallah, P.O. Box 2348 Sioux Falls,
SD 57101 605-338-4304**DEFENDANTS**

3M COMPANY

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- | | |
|--|---|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III) |

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 375 False Claims Act
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 376 Qui Tam (31 USC 3729(u))
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability		<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 330 Federal Employers' Liability		<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability		<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 350 Motor Vehicle		<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 370 Other Fraud		<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 371 Truth in Lending		<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 380 Other Personal Property		<input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692)
<input type="checkbox"/> 190 Other Contract		<input type="checkbox"/> 385 Property Damage		<input type="checkbox"/> 485 Telephone Consumer Protection Act
<input type="checkbox"/> 195 Contract Product Liability		<input type="checkbox"/> 390 Other Product Liability		<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 196 Franchise		<input type="checkbox"/> 710 Fair Labor Standards Act		<input type="checkbox"/> 850 Securities/Commodities/ Exchange
		<input type="checkbox"/> 720 Labor/Management Relations		<input type="checkbox"/> 890 Other Statutory Actions
		<input type="checkbox"/> 740 Railway Labor Act		<input type="checkbox"/> 891 Agricultural Acts
		<input type="checkbox"/> 751 Family and Medical Leave Act		<input type="checkbox"/> 893 Environmental Matters
		<input type="checkbox"/> 790 Other Labor Litigation		<input type="checkbox"/> 895 Freedom of Information Act
		<input type="checkbox"/> 791 Employee Retirement Income Security Act		<input type="checkbox"/> 896 Arbitration
				<input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision
				<input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	IMMIGRATION	
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> Habeas Corpus:	<input type="checkbox"/> 462 Naturalization Application	
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 463 Alien Detainee	<input type="checkbox"/> 465 Other Immigration Actions	
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 510 Motions to Vacate Sentence		
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General		
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 535 Death Penalty		
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> Other:		
	<input type="checkbox"/> 448 Education	<input type="checkbox"/> 540 Mandamus & Other		
		<input type="checkbox"/> 550 Civil Rights		
		<input type="checkbox"/> 555 Prison Condition		
		<input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement		

V. ORIGIN (Place an "X" in One Box Only)

- | | | | | | | |
|---|---|--|---|--|--|---|
| <input checked="" type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from Another District (specify) _____ | <input type="checkbox"/> 6 Multidistrict Litigation - Transfer | <input type="checkbox"/> 8 Multidistrict Litigation - Direct File |
|---|---|--|---|--|--|---|

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 USC Sections 1332.**VI. CAUSE OF ACTION**

Brief description of cause:

Personal injury

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. **DEMAND \$** greater than \$75,000 **CHECK YES only if demanded in complaint:** JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

SIGNATURE OF ATTORNEY OF RECORD

4/11/23

FOR OFFICE USE ONLY


 Signature of Judge

RECEIPT #	AMOUNT	APPLYING IJP	JUDGE	MAG. JUDGE
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